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# Property

*Mechanics' Liens*—Chapter 23 of the Acts of 1947 provides a procedure by which a property owner may secure the formal release of a mechanics' lien which has been recorded (upon his property) for more than two years. The owner files a personal affidavit with the recorder of the county in which the property is situated, stating that no suit has been filed and no unsatisfied judgment rendered against the prop-

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50. Ind. Acts 1881 (Spec. Sess.), c. 45, §2, Ind. Stat. Ann. (Burns, 1933) §6-102.
51. Ind. Rev. Stat. 1852, c. 103, §8, Ind. Stat. Ann. (Burns, 1933) §49-3313.
52. Ind. Acts 1947, c. 263, §1.
53. Ind. Acts 1947, c. 98, §1.
54. Ind. Acts 1889, c. 96, §1, Ind. Stat. Ann. (Burns, Repl. 1946) §2-814.
55. Ind. Acts 1947, c. 98, §1.

erty.[1] It is then the duty of the recorder to certify across the face of the record of the lien that it is fully satisfied and that the real estate is released from the lien.[2]

*Water Rights*—Chapter 154 regulates the quantity and manner in which ground waters may be removed for air conditioning and cooling purposes. After January, 1948, no more than 200 gallons per minute can be removed unless it is circulated through cooling towers or otherwise returned through recharge wells, unless a permit is secured from the Indiana Department of Conservation. The department shall issue a permit if it finds the withdrawal will not affect the ground water resources of the area, to an extent that will cause injury to the public health and welfare of the community. Before percolating water taken for cooling purposes is returned to the ground a permit must be secured from the State Board of Health. No provision is made for the punishment of violations of the act.

Chapter 181 declares that the State is vested with the full power and control of all fresh water lakes of the State and holds them in trust for the use of all citizens. No person owning adjoining land has the exclusive right to the use of waters of such lakes. It is made unlawful for anyone to extend the shore line of a public fresh water lake by draining or filling in the waters. The act provides that no rights shall accrue to riparian owners through draining a lake or building into it; acretion rights are limited to lands from which waters have naturally receded.[3] In these respects the act codifies the common law.[4] The act does not apply to marsh lands that were covered by a lake which has receded, nor to lands under the waters of Lake Michigan. The only sanction in the act is that the Indiana Department of Conservation may enjoin a person violating the provisions of the act.

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1. Ind. Stat. Ann. (Burns, 1933) §10-3802 provides that anyone who wilfully makes false statements in an affidavit is guilty of perjury and punishable accordingly.
2. Cf. Ind. Stat. Ann. (Burns, Repl. 1946) §3-1633 procedure for cancelling gas and oil leases by affidavit of owner of land.
3. Ind. Stat. Ann. (Burns, Repl. 1946) §§2-618, 2-619.
3. However, the Indiana Department of Conservation may, after an investigation, grant a permit to the owner of land abutting upon a lake to extend the shore line of the lake by filling in.
4. See Tiffany, "Real Property" (1940) §§461, 507 et. seq. 765.

*Descent and Inheritance*—Chapter 256[5] provides that a second or subsequent childless husband now takes the same interest as a second or subsequent childless widow—i.e., a life estate in one third of the wife's real property. The new act also changes the wording of the repealed act from "without children by him" to "without children by him or her living at time of his or her death." This was the interpretation which early had been placed upon these ambiguous words by the Indiana courts.[6]

*Conveyances By Infants*—Chapter 220 enables any married man or woman under the age of twenty-one years, to make contracts, mortgages, conveyances, or agreements to convey interests in real estate if the spouse is an adult and joins in the transaction. It is a condition precedent that the minor first secure the consent of the judge of the circuit court in which he resides. Formerly, this was permissible only in the case of a minor married woman.[7]

*Statute of Limitations*—The State Bar Association appointed a committee in 1944 to recommend changes in the Indiana statute of limitations and to draft a complete model abstract in order to remedy the present complicated and expensive abstracting system and to provide a uniform system of abstracting throughout the state.[8] Chapter 193 is the result of this effort of the Bar Association.[9] The declared legislative purpose of the act is to simplify and facilitate land

5. Specifically repeals Ind. Acts 1899, c. 99, §2, p. 131; Ind. Acts 1901, c. 240, §1, p. 554, Ind. Stat. Ann. (Burns, 1933) §6-2315, and substantially reenacts it. For similar provisions for a widow see Ind. Stat. Ann. (Burns, 1933) §6-2321.
6. Thompson v. Henry, 153 Ind. 56, 54 N.E. 109 (1899); Utterback v. Terhune, 75 Ind. 363 (1881).
7. Ind. Acts 1907, c. 76, §§1, 2, Ind. Stat. Ann. (Burns, 1933) §§56-201, 56-202.
8. Citizens of this state had long believed that the present abstracting system was too complicated and expensive. Individual bar associations tried to help the situation by setting up their own methods of abstracting in order to stop the present practice of hunting for technicalities on which to base suits. Lists of items were made the omission of which would not affect the marketability of titles and were to be waived in the examination of abstracts. Zechiels, "The Problem of Abstracts of Title" (1945) 20 Ind. L.J. 303 discusses the situation and bar association recommendations to remedy it.
9. The proposed statute of limitations was discussed section by section in the Bar Committee Report, "The Proposed Statute of Limitations" (1947) 22 Ind. L.J. 165, 179, and compared with the Wisconsin, Minnesota, and Michigan acts which were used as drafting models. Those statutes were adopted in 1941, 1943, and

transactions by permitting persons dealing with a record title owner to rely on a record title covering a period of more than fifty years prior to the date of the transaction.

Chapter 193 abolishes rights of action affecting the possession or title of real property founded upon (1) an unrecorded instrument executed more than fifty years prior to the commencement of the action, or (2) a recorded instrument, recorded more than fifty years prior to the filing of the action, held by a person not in possession at the time of the suit, or (3) a transaction, act, event, or omission occuring more than fifty years prior to the commencement of the action, or (4) a claim based on an interest arising out of the failure of a husband or wife to join in a conveyance by the other spouse where the instrument of conveyance does not affirmatively disclose intermarriage and has been recorded for a period of fifty years.[10] If a verified notice of a claim of interest in the real property is recorded within the fifty-year period and an action is commenced on this claim within one year the interest is not extinguished.[11]

A marketable title is established in a record title owner who has had an unbroken chain of title for fifty years and against whose title no notice of claim has been filed. A purchaser for value is likewise vested with title, free of any claim not filed. However, the record title owner is given a marketable title only in that interest in the land which the muniments of his title purport to convey to him. The statute does not apply against one in adverse possession of the real property.

Disability or lack of knowledge of any kind does not suspend the running of the fifty-year period.[13] However, claims may be filed by a representative of a claimant under a disability who may be unable to assert a claim in his own behalf, or one of a class whose identity cannot be established or is uncertain at the time.[14]

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1945 respectively. No cases had been brought to trial under any of them at the time of the drafting of the Indiana act.

10. Ind. Acts 1947, c. 193, §1.
11. Requirements as to the manner of filing and contents of the notice of claim are specified in the act, §3.
12. Ind. Acts 1947, c. 193, §5.
13. Id. §7.
14. There is some doubt as to whether this places an affirmative duty upon such a representative (as a guardian) to file a claim, or is merely a privilege of which the representative may take advantage for the benefit of the person under the disability.

The act does not bar any lessor or his successor as reversioner of his right to possession on the expiration of any lease, nor any mortgagee or his successor under a mortgage extending more than fifty years.[15] Included in the class of interests extinguished are statutory rights in lieu of dower, or curtesy, reversions, tax deeds, and rights as heir or under a will.[16] It is immaterial whether these claims are asserted by a person for himself or for another, by a resident or nonresident, by a natural or corporate person, or by a private or governmental body. This is one of the comparatively few instances in which a statute of limitations is allowed to run against the state.[17]

The act specifically repeals Acts of 1941, chapter 141, section 1 and 2.[18] This act was ignored to a large extent by members of the bar who were not convinced of its constitutionality, and consequently no cases were ever brought to trial under it. In discussions, the validity of the statute was questioned and it was predicted to be constitutional in spite of its retrospective aspects.[19] The 1941 act did not affect interests of persons under disabilities, pending litigation, or vested property rights. It in no way changed laws pertaining to adverse possession. No long established property interests were intended to be affected. The main purpose of the act was to correct mechanical errors and to bar claims not excepted from the act. The new act in its provisions regarding vested interests and disabilities is believed to accomplish those things which the legislature expressly did not intend doing in the older act.

Ordinarily, one cannot be divested of a vested property right without his consent.[20] It is an absolute and unconditional right.[21] But it is recognized that statutes of limitations

15. Ind. Acts 1947, c. 193, §8.
16. Id. §9.
17. Littell, "A Comparison of the Statutes of Limitation" (1945). 21 Ind. L.J. 23, 39, shows that only six states have limitations on the time in which a state may bring an action on real property.
18. Ind. Ann. Stat. (Burns, 1933) §2-626. That act provided that defects, imperfections, or adverse claims which appeared in abstracts of title or were matters of record 35 years or more prior to the time that property might be sold were to cease to exist and were barred against the present owner of the property.
19. Note (1941) 17 Ind. L.J. 176 discusses the constitutionality and effect, of the act.
20. Merchants Bank v. Garrard, 158 Ga. 867, 124 S.E. 715 (1924).
21. State v. Hackman, 272 Mo. 609, 199 S.W. 990 (1917).

may constitutionally bar remedial actions as to rights already in existence if a reasonable opportunity is given in which to assert them. No interest or claim is to be barred by the new act until the lapse of one year after its passage. The act provides that any person whose rights would be barred now by the act must assert such rights by January 21, 1948, or be forever barred. Since the act does not take effect until proclamation by the governor, there will be a very short time in which these claims must be filed in order to preserve them.[22]

## PUBLIC UTILITIES

*Motor Carriers*—The legislature made few important changes or additions to public utility law. Chapter 299 permits a certificate of public convenience and necessity held by a common carrier operating motor vehicles on the public highways to be sold, assigned, leased, bequeathed or transferred, upon approval by the Public Service Commission, *in part* as well as in the entirety. The prior act made no provision for partial disposal.

*Rate Bases*—Chapter 307 provides that the Public Service Commission in determining a rate base shall evaluate public utility property according to its "fair value" instead of its "current, fair cash value."[2] This change in word formula should make no difference in the Commission's technique. The Commission is to give such consideration as it considers appropriate to all bases of valuation which may be presented or which the Commission has already been authorized to consider. It is settled that a rate making commission is not bound to any one or combination of rate formula.[3]

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22. Thus one of the big questions in regard to the new act is whether enough time is given in which to file notice to preserve claims. The Michigan act of 1945, No. 200, from which this act was modeled in part, allowed one year in which to file notice to save claims, and the validity of the provision was questioned in 44 Mich. L.R. 45, and prophesy made that it would be held constitutional. No cases are on record testing the constitutionality of that act. It was also suggested with regard to the Michigan act that abstractors might continue to trace titles back farther than the forty years provided by the statute, but the new act would simplify the job of advising clients as prospective purchasers.

1. Ind. Stat. Ann. (Burns, 1933) § 47-1219.
2. Ind. Stat. Ann. (Burns, 1933) § 54-203.
3. F.P.C. v. Hope Natural Gas Co., 319 U.S. 735 (1942).